**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 122 of 1997**

**For Approval and Signature:**

## HONOURABLE MR.JUSTICE C.K.BUCH

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | |
| 2 | To be referred to the Reporter or not ? | |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? | |
| 5 | Whether it is to be circulated to the civil judge ? | |

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**JAYESHBHAI RATILAL PATEL - Appellant(s)**
**Versus**
**STATE OF GUJARAT - Opponent(s)**

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**Appearance :**
MR NS DESAI for Appellant(s) : 1,
MS DS PANDIT, LD.APP for Respondent-State.

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## CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

**Date : 15/10/2007**

**ORAL JUDGMENT**

1. The appellant-orig. convict (hereinafter referred to as 'the appellant') has preferred present appeal under Section 374 of the Code of Criminal Procedure, 1973, challenging the judgment and order of conviction and sentence dated 30th January 1997 passed by the learned

Additional Sessions Judge, Nadiad, in Special Case No.103 of 1995, whereby the learned trial Judge has held the appellant guilty for the charge of offence punishable under Section 354 of the Indian Penal Code and also for the offence punishable under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, 1989, (hereinafter referred to as 'the Act') and sentenced him to undergo simple imprisonment for six months for each of the said offences.

2. Shri N.S. Desai, learned counsel appearing for the appellant, has taken me through the grounds of challenge mentioned in the memo of the appeal. Shri N.S. Desai has also taken me through the oral as well documentary evidence led during the course of trial to bring home the charge. According to Shri N.S. Desai, the finding of guilt recorded by the learned trial Judge is erroneous as the same has been arrived at on incorrect and illegal appreciation of the oral as well as documentary evidence, and the learned trial

Judge has also ignored the scheme of Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Rules, 1995 (hereinafter referred to as 'the Rules') framed under the Act, and mainly Rule 7, which is mandatory in nature. In the present case, the initial investigation after registration of the complaint was undertaken by one Police Jamadar and, thereafter the Police Sub-Inspector of the concerned Police Station had filed his final report under Section 173(2) of the Code.

3. On the other hand, Ms.D.S. Pandit, learned Additional Public Prosecutor appearing on behalf of the respondent-State, has resisted the submissions made by Shri N.S. Desai relying upon the finding recorded by the learned trial Judge. She has submitted that no error can be said to have been committed by the learned trial Judge in appreciating the evidence and there was no reason for the learned trial Judge to disbelieve the victim lady with whom the appellant had misbehaved by pushing her inside the flour mill run by him.

The version of victim-lady is corroborated by her husband. Immediately after the incident, both these important witnesses had visited the house of two reputed persons of the village, including at the house of Suresh Somabhai because the victim-lady was serving as a labourer in the agricultural field of the said Suresh Somabhai.

4. However, in response to the query raised by the Court, Ms.D.S. Pandit has fairly accepted that the offence in question was not investigated by the Deputy Superintendent of Police as contemplated under Rule 7 of the Rules. These Rules have come into force since 31st March 1995 and the incident in question, as per the say of the prosecution, has occurred on 08th September 1995. So these Rules has application and implication to the present case.

5. To appreciate the rival contentions placed before this Court, firstly it would be beneficial to state the basic facts which were

placed before the learned trial Judge on the strength of the complaint registered by Matar Police Station. It is alleged that the appellant has his flour mill at village Sandhana, Tal.Matar, and on the date of incident at about 07-00 a.m., the complainant had been to the flour mill of the appellant to purchase flour of the grains which were given to the appellant by the victim-lady on the previous day. She was to pay an amount of Rs.1-40 ps. towards the same and hence, she had paid an amount of Rs.1-50 ps. and when she was just proceeding to her home, she was called back by the appellant asking her as to whether she is not interested in taking back her 10 paise. So with a view to get the coin of 10 paise, she reentered the flour mill. At that time, the appellant while putting the coin of 10 paise in one hand of the victim, caught her another hand and played with her by pushing her into interior side of the flour mill and, thereafter she was pressed. On account of this sudden assault, the victim-

lady raised her voice and shouted. Fortunately, her husband who had gone to fetch milk, was passing by the said place and he came to the rescue of the victim-lady. Immediately, after the incident the husband of the victim firstly had reprimanded the appellant and thereafter, both the victim-lady and her husband had gone to make a complaint. The victim had gone to the house of Raman Gohil and the husband of victim had approached the master of his wife namely Sureshbhai. Thereafter, the complaint in question came to be filed. After due investigation, the police found some substance in the complaint and therefore, chargesheeted the appellant.

6. Shri N.S. Desai, learned counsel appearing for the appellant, has taken me through the evidence of victim and the version of her husband as well as the say of Sureshbhai. This Sureshbhai had turned hostile. True it is that the prosecution had not declared this witness has hostile technically, but plain reading of the evidence of this witness shows that he has

not supported the case of the prosecution. On the contrary, it has emerged that the terms between the said Sureshbhai and the victim-lady were inimical on account of some dispute as to the remuneration and other facilities, etc. and a case was also instituted by the husband of the victim in the Labour Court against the said PW-Sureshbhai. Shri N.S. Desai has taken me through certain improvements made by the victim-lady in her evidence as to her conduct and the conduct of her husband immediately after the incident in question; and also the contradictions which are there in the evidence of the victim and her husband.

7. It is submitted by Shri N.S. Desai that when the case of the prosecution was based only on the bare words of the victim-lady, it was not safe for the Court to link the appellant with the crime, especially when a very material witness i.e. Raman Gohil, has not been examined by the prosecution whom, even as per the say of the prosecution, the victim-laid

must have unfolded the story for the very first time about the wrong committed with her.

8. The another argument advanced by Shri N.S. Desai is that without entering into the merits of the evidence led by the prosecution, the learned trial Judge ought to have acquitted the appellant mainly on the ground that the investigation carried out by the Police Jamadar at an initial stage and filing of the chargesheet by the Police Sub-Inspector on completion of the investigation has caused serious prejudice to the appellant because from the very beginning it is the say of the appellant that he has been falsely implicated in the offence. He has also submitted that the complainant and her husband are in habit of filing such complaints. It is also suggested that they had filed one similar type of complaint against one person of Patel Community of village Tharedi. The act of prosecuting her own master in the Labour Court through her husband poses, these two witnesses as persons conversant with the Court

procedure, etc. So the investigation by a statutory officer was badly required and non-investigation by an officer as contemplated in Rule 7 of the Rules would go to the root of the fairness of the investigation. In support of this submission, Shri N.S. Desai has placed reliance on the following decisions :

*(i) 1999 CrLJ 3938, Madras High Court*

*(ii) 2000 CrLJ 3125,Andhra Pradesh High Court*

*(iii) 2005 CrLJ 1162,Andhra Pradesh High Court*

9. The ratio of all these three decisions is that if the investigation is conducted by the officer who is not authorised, such investigation is improper and the benefit obviously would go to the appellant. Shri Desai has drawn the attention of this Court to one decision of this Court (Coram: C.K.Buch,J) in the case of Jayeshbhai Chandubhai Patel v. State of Gujarat dated 17th April 2007 rendered in Criminal Appeal No.249 of 1998, and submitted that the observations made by this Court in the cited decision of Jayeshbhai (supra) would squarely help the present

appellant. So on this sole ground, the appeal may be allowed and appellant may be acquitted. For the sake of brevity and convenience, I would like to reproduce the relevant paragraphs of the cited decision wherein the said Rule 7 of the Rules has been incorporated, which are as under :

> *“(v) In the present case, the investigation was carried out by a Police Sub-Inspector and the Police Sub-Inspector had filed chargesheet. Now as per the settled legal position, Rule 7(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as 'the Rules'), the Investigating Officer authorised under Rule 7(1) of the Rules shall investigate such a crime. The Police Sub-Inspector was not authorised to investigate the crime and to file the report under Section 173 of the Code of Criminal Procedure, 1973. It is not the*

*case of the prosecution that the services of the said Police Sub-Inspector were requisited by the Dy.S.P. and the investigation was ultimately controlled by Dy.S.P. and the appellant has been chargesheeted by the Dy.S.P. and not by the officer below the rank as mentioned in Rule 7(1) of the Rules. For the sake of brevity and convenience, the Court would like to reproduce the relevant part of the said Rule 7 of the Rules, which is as under :*

> ***"7.*** *Investigating Officer :*
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> ***(1)*** *An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government, Director-General of Police, Superintendent of Police after taking into account his past*

*experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time."*

*(vi) The language of the said Rule 7(1) of the Rules itself is very clear. It is mandatory in nature and the same has been held mandatory by more than one decision. It is not necessary for this Court to refer to those decisions. In such or similar cases, the accused can legitimately argue that the entrustment of investigation to the office not authorised for investigation has resulted into serious prejudice to the accused. It is present case it is also possible to argue that the officer of the rank of Dy.S.P. probably would have insisted for examination of Sarpanch or Talati during the trial and instructed the learned Public*

*Prosecutor in the matter satisfactorily because both of them have been named in the complaint. It is true that the learned Public Prosecutor is entitled to examine any witness. The only care which is required to be taken is that the trial should be conducted in a fair manner. The chronology of the witness is also a matter of discussion with the learned Public Prosecutor. But when a question of dropping of an important witness comes, then the learned Public Prosecutor should act most objectively.“*

10. The arguments advanced by Shri N.S. Desai placing reliance on the scheme of Rule 7 of the Rules has enough force and, therefore, the same is required to be accepted. So without entering into discussion of the evidence led by the prosecution and correctness of the finding recorded by the learned trial Judge, the present appeal is required to be allowed.

11. In view of aforesaid observations and

discussion, the present appeal is hereby allowed. The judgment and order of conviction and sentence dated 30th January 1997 passed by the learned Additional Sessions Judge, Nadiad in Special Case No.103 of 1995, is hereby quashed and set aside. The appellant-orig.convict is ordered to be acquitted from all the charges levelled against them in respect of the offences in question. The bail bond stands discharged.

***(C.K. Buch, J)***

Aakar